

FILED BY CLERK

MAY -3 2012

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	2 CA-CR 2011-0329
	)	DEPARTMENT B
Appellee,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 111, Rules of
RICHARD FREDERICK KINNER JR.,	)	the Supreme Court
	)	
Appellant.	)	
_____	)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20112412001

Honorable Christopher C. Browning, Judge

AFFIRMED

Michael G. Rankin, Tucson City Attorney  
By Baird S. Greene and William F. Mills

Tucson  
Attorneys for Appellee

Lori J. Lefferts, Pima County Public Defender  
By Lisa M. Hise

Tucson  
Attorneys for Appellant

ESPINOSA, Judge.

¶1 Richard Kinner Jr. appeals from the superior court's order affirming his convictions and sentences, entered in Tucson City Court, for three counts of causing serious physical injury or death as a result of a moving violation. *See* A.R.S. § 28-

672(A)(1).<sup>1</sup> Counsel has filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999), avowing she has reviewed the entire record but has found no arguably meritorious issues to raise on appeal. Consistent with *Clark*, she has provided “a detailed factual and procedural history of the case with citations to the record,” 196 Ariz. 530, ¶ 32, 2 P.3d at 97, and asks this court to search the record for error. Kinner has not filed a supplemental brief.

¶2 As counsel has acknowledged, our jurisdiction on appeal “from a final judgment of the superior court in an action appealed from a justice of the peace or police court” is limited to issues involving “the validity of a tax, impost, assessment, toll, municipal fine or statute.” A.R.S. § 22-375(A). In all other instances, “there shall be no appeal from the judgment of the superior court given in an action appealed from a justice of the peace or a police court.” § 22-375(B). Accordingly, our review is limited to the superior court’s rejection of Kinner’s argument that § 28-672 “is unconstitutional because it does not proscribe ‘conduct’ as defined under Arizona law.”

¶3 In its ruling affirming Kinner’s convictions and sentences, the superior court wrote,

The argument that a civil traffic violation is somehow not “conduct” under A.R.S. § 13-105[(6),] (27) is unsupported by the law and is not persuasive. [Section] 28-672 pr[e]scribes that a person is guilty of causing serious physical injury or death by a moving violation if that person violates one of several enumerated Arizona traffic statutes and “the violation results in an accident causing serious

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<sup>1</sup>Kinner appears to have been sentenced to twenty-five days in jail and one year of probation for each of the three counts, to be served consecutively.

physical injury or death to another person.” The requirement to stop for a red light, though imposed under civil traffic statutes, is a legal duty nevertheless. Failure to stop at a red light can reasonably be considered a “failure to perform an act as to which a duty of performance is imposed by law.” [§ 13-105(28)]. Likewise, . . . § 28-672 requires that the act or omission, in this case running a red light, [*see* A.R.S. § 28-645(A)(3)(a),] caused a collision and that collision caused injury. Here, a reasonable fact finder could have concluded that [Kinner] violated . . . § 28-672 by failing to stop for a red light, that [Kinner]’s failure resulted in a collision, and that the collision caused serious physical injury. As applied to the facts at bar, . . . § 28-672 is constitutional.

¶4 Like counsel, we find no arguably meritorious issue to be raised on appeal from the superior court’s ruling that § 28-672 is constitutionally valid. Accordingly, that order is affirmed.

/s/ Philip G. Espinosa  
PHILIP G. ESPINOSA, Judge

CONCURRING:

/s/ Garye L. Vásquez  
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Virginia C. Kelly  
VIRGINIA C. KELLY, Judge